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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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August 18, 2006

Fernando Galindo
UNITED STATES DISTRICT COURT
Room 193
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Re: 06-6387 US v. Hoggard
2:04-cr-00066-RGD-2
2:05-cv-00633-RGD

Dear Clerk:

Enclosed is an opinion of this Court remanding the case for limited purpose. The record on appeal is being returned for the district court's use. Please return the record, as supplemented, to this Court after completing the determination on remand.

Yours truly,

PATRICIA S. CONNOR
Clerk

/s/ Diane H. Burke

By: _____
Deputy Clerk

cc: Rickey Collins Hoggard
Andrew Murdock Robbins

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6387

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RICKEY COLLINS HOGGARD,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (2:04-cr-00066-RGD-2; 2:05-cv-00633-RGD)

Submitted: July 31, 2006

Decided: August 18, 2006

Before WILKINSON and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Rickey Collins Hoggard, Appellant Pro Se. Andrew Murdock Robbins, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Rickey Collins Hoggard seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2000) motion. The notice of appeal was received in the district court shortly after expiration of the appeal period. Because Hoggard is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The record does not conclusively reveal when Hoggard gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain available information from the parties that bears upon this question and to determine whether the filing was timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED